



0000082760

BEFORE THE ARIZONA CORPORATION C

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

MAR 20 2008

MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

DOCKETED BY

nl

IN THE MATTER OF THE APPLICATION OF
FRONTIER COMMUNICATIONS OF AMERICA,
INC., FOR APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
FACILITIES BASED LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-04036A-07-0108

DECISION NO. 70195

OPINION AND ORDER

DATE OF HEARING: November 20, 2007
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
APPEARANCES: Mr. Jeffrey W. Crockett, SNELL & WILMER, L.L.P.
on behalf of Applicant; and
Mr. Christopher C. Kempley, Chief Counsel, Legal
Division, on behalf of the Utilities Division of the
Arizona Corporation Commission.

BY THE COMMISSION:

On February 20, 2007, Frontier Communications of America, Inc. ("Frontier" or "Applicant") submitted to the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide facilities-based local exchange telecommunications services in Arizona.

On March 20, 2007, the Commission's Utilities Division ("Staff") filed a Letter of Insufficiency and first set of data requests in this matter.

On April 12, 2007, Frontier filed its response to the data request.

On September 7, 2007, Staff filed its Staff Report recommending approval of Frontier's application.

By Procedural Order issued October 11, 2007, the hearing in the matter was scheduled to begin on November 20, 2007, and other procedural deadlines were established.

1 On November 9, 2007, Frontier docketed its Affidavit of Publication.

2 On November 15, 2007, Frontier filed a Notice of Appearance of Counsel.

3 On November 20, 2007, a full public hearing was held before a duly authorized
4 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Applicant and
5 Staff appeared through counsel and presented evidence and testimony. No members of the public
6 appeared to give public comments in this matter. At the conclusion of the hearing the matter was
7 taken under advisement pending submission of a Recommended Opinion and Order of the
8 Commission.

9 * * * * *

10 Having considered the entire record herein and being fully advised in the premises, the
11 Commission finds, concludes, and orders that:

12 **FINDINGS OF FACT**

13 1. Frontier was initially granted authority to provide resold long distance in Arizona in
14 Commission Decision No. 65105 (August 22, 2002).

15 2. On February 18, 2003, in Commission Decision No. 65644, Frontier was granted
16 approval to merge with Citizens Telecommunications Company ("Citizens").

17 3. Frontier is a foreign C corporation incorporated in the State of Delaware and
18 authorized to transact business in Arizona.

19 4. Frontier currently provides resold long distance services in Arizona and 23 other
20 states.

21 5. On February 20, 2007, Frontier filed an application for a CC&N to provide facilities
22 based local exchange telecommunications services in the State of Arizona. The application also seeks
23 a determination that its proposed services be classified as competitive.

24 6. Staff recommends approval of Frontier's application for a CC&N and its petition for a
25 determination that its proposed telecommunications services should be classified as competitive.

26 7. Staff further recommends that:

- 27 a.) Frontier comply with all Commission Rules, Orders, and other requirements
28 relevant to the provision of intrastate telecommunications services;
b.) Frontier abide by the quality service standards that were approved by the

Commission for Qwest in Docket No. T-01051B-93-0183;

- c.) Frontier be prohibited from barring access to alternative local exchange service providers who wish to serve areas where Frontier is the only provider of local exchange service facilities;
- d.) Frontier be required to notify the Commission immediately upon changes to Frontier's name address or telephone number;
- e.) Frontier cooperate with Commission investigations including, but not limited to customer complaints;
- f.) Frontier's rates be classified as competitive;
- g.) Although Staff considered the fair value rate base ("FVRB") information submitted by Frontier, the fair value information provided should not be given substantial weight in this analysis;
- h.) Frontier offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
- i.) Frontier offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
- j.) Frontier be authorized to provide local exchange service to customers only in service areas outside of those served by its incumbent local exchange carriers ("ILEC") affiliates in Arizona; and
- k.) Frontier be authorized to discount its rates and service charges to the marginal cost of providing the services.

8. Staff further recommends that Frontier comply with the following conditions, within the timeframes outlined below, or Frontier's CC&N should be considered null and void, after due process.

1. That Frontier docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted to the Commission should coincide with the application and state that Frontier does not collect advances, deposits and/or prepayments from its customers.

2. Frontier shall:

- a. Procure a performance bond or irrevocable sight draft letter of credit equal to \$100,000. The minimum performance bond or the irrevocable sight draft letter of credit amount of \$100,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from Frontier's customers. The performance bond or irrevocable sight draft letter of credit amount should be increased in increments of \$50,000. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$10,000 of the performance bond or the irrevocable sight draft letter of credit amount.
- b. Docket proof of the performance bond or irrevocable sight draft letter of credit within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first. The

performance bond or the irrevocable sight draft letter of credit must remain in effect until further order of the Commission.

Technical Capabilities

9. Frontier has been granted authority, but has not yet begun to provide, facilities based local exchange services in California, Idaho, Montana, Nevada and Oregon.

10. Frontier's witness testified that the key personnel for Frontier have a combined total of over 120 years experience in the telecommunications industry. (Tr. Pg. 20, lines 20-25 and Pg. 21, lines 1-14)

11. Frontier is seeking authority to provide local exchange within all of the Qwest territories in Arizona, but Frontier will initially confine its operations to the Qwest exchanges in Cottonwood, Flagstaff, Joseph City, Payson, Prescott, Sedona, Williams and Winslow.

12. Frontier plans to provide local exchange services to residential customers.

13. Frontier has four affiliates operating in Arizona, including three rural incumbent local exchange carriers and one commercial mobile radio service provider.¹

14. Based on Frontier's experience in the telecommunications industry, Frontier has the technical capabilities to provide the telecommunications services it is requesting to provide in Arizona.

Financial Capabilities

15. Frontier will rely on the financial resources of its parent company, Citizens.

16. Frontier provided Balance and Income Statements for the year ending December 31, 2006, which showed total assets of \$4,414,365, total shareowner's equity of \$8,810,833 and net income of \$375,424. For the same timeframe, Citizens showed total assets of \$6.8 billion, total shareowners' equity of \$1.1 billion and net income of \$345 million.

17. Frontier's proposed tariff states it will not collect deposits or advances from its local exchange customers.

18. All CC&Ns for facilities-based local exchange service must be secured by a minimum

¹ Frontier's three rural ILECs are: Citizens Utilities Rural Company, dba Frontier Citizens Utilities Rural; Citizens Telecommunications Company of the White Mountains, dba Frontier Communications of the White Mountains; and Navajo Communications Company, Inc. Frontier and the four affiliates are subsidiaries of Citizens.

1 bond or irrevocable sight draft letter of credit in the amount of \$100,000.

2 19. In its application, Frontier stated it was not willing to post the \$100,000 minimum
3 bond. At hearing, Frontier modified its response, stating it concurred with Staff's recommendation
4 concerning posting a performance bond within 30 days before commencing service or within one
5 year, whichever comes first. (Tr. Pg. 16, lines 1-25)

6 20. During the hearing, Staff submitted a proposed change to the language of its
7 performance bond recommendation. Staff's proposed change would require Frontier to post its
8 performance bond within 30 days of a decision in this matter.

9 21. Frontier's witness testified that the company should not have to post a bond within 30
10 days of the decision in this matter because Frontier doesn't plan to begin operations until the second
11 quarter 2008. Frontier further argued Staff's change would require the company to post a bond even
12 before it has its first customer, and that Citizens is a responsible organization and due to its
13 operations as well as Frontiers operations in Arizona, the requirement to post a bond within 30 days
14 of a decision in this matter, is inappropriate. (Tr. Pg. 17, lines 1-25 and Pg. 18, lines 1-6) The
15 witness further stated that the requirement to post the bond was inconsistent with Staff's
16 recommendation that Frontier file its tariffs 30 days prior to serving its first customer. (Tr. Pg. 26,
17 lines 6-16)

18 22. Staff's witness testified that although Staff was aware that its recommendation did
19 split the timing between the posting of the bond and the filing of the tariff, Staff believes the posting
20 of the bond gives additional security for customers who may not have alternatives. (Tr. Pg. 34, lines
21 1-25 and pg. 35, lines 1-12)

22 23. Staff's amended language requiring Frontier to post a bond within 30 days of a
23 decision in this matter is consistent with prior Commission decisions and should be adopted.²

24 24. Pursuant to Arizona Administrative Code ("A.A.C.") R-14-2-1107, if Frontier desires
25 to discontinue service in Arizona it must file an application with the Commission, and notify its
26

27 ² In Commission Decision No. 69240 (January 19, 2007), 360Networks (USA), Inc., application was conditionally
28 granted to provide facilities based local exchange telecommunications services in Arizona, subject to the Applicant
procuring either a performance bond or irrevocable sight draft letter of credit within 30 days of the effective date of the
Decision.

1 customers and the Commission sixty (60) days prior to filing the application to discontinue service.
2 Further, Frontier's failure to meet the requirements of the rule will result in a forfeiture of Frontier's
3 performance bond or sight draft letter of credit.

4 **Rates and Charges**

5 25. Pursuant to A.A.C. R14-2-1109, Frontier may charge rates for service that are not less
6 than its total service long-run incremental costs of providing service.

7 26. Frontier's proposed rates are for competitive services. In general, rates for
8 competitive services are not set according to the rate of return regulation.

9 27. Frontier will have to compete with ILECs and various CLECs currently providing
10 local exchange service.

11 28. Based on the competitive environment that Frontier will be operating in, it will not be
12 able to exert any market power and the competitive process should result in rates that are just and
13 reasonable.

14 29. Given the competitive markets in which Frontier will operate, Frontier's FVRB is too
15 small to be useful in a fair value analysis.

16 30. Frontier docketed an updated tariff on this matter.

17 31. Frontier's proposed rates, as they appear in its updated tariff, are just and reasonable
18 and should be approved.

19 **Local Exchange Carrier Specific Issues**

20 32. Frontier plans to serve only residential local exchange customers.

21 33. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, Frontier will make
22 number portability available to facilitate the ability of customers to switch between authorized local
23 carriers within a given wire center without changing their telephone number and without impairment
24 to quality, functionality, reliability or convenience of use.

25 34. In compliance with A.A.C. R14-2-1204, all telecommunications service providers that
26 interconnect into the public switched network shall provide funding for the Arizona Universal Fund
27 ("AUSF").

28 35. Frontier will contribute to the AUSF as required by the A.A.C., and shall make the

1 necessary monthly payments as required under A.A.C. R14-2-1204(B).

2 36. In Commission Decision No. 59421 (December 20, 1995) the Commission approved
3 quality of service standards for Qwest which imposed penalties due to an unsatisfactory level of
4 service. In this matter, Frontier does not have a similar history of service quality problems, and
5 therefore the penalties in that decision should not apply.

6 37. In the areas where Frontier is the only local exchange service provider, Frontier is
7 prohibited from barring access to alternative local exchange service providers who wish to serve the
8 area.

9 38. Frontier will provide all customers with 911 and E911 service where available, or will
10 coordinate with ILECs, and emergency service providers to facilitate the service.

11 39. Pursuant to prior Commission Decisions, Frontier may offer customer local area
12 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or
13 unblock each individual call at no additional cost.

14 40. Frontier must also offer Last Call Return service, which will not allow the return of
15 calls to the telephone numbers that have the privacy indicator activated.

16 41. Frontier's witness testified that Frontier will not be providing local phone service in
17 any area in Arizona that is currently served under the CC&N held by any of its affiliated ILECs. (Tr.
18 Pg. 15, lines 9-17)

19 **Complaint Information**

20 42. Frontier has not had an application for service denied, or revoked, in any state.

21 43. Frontier has no outstanding complaints in Arizona.

22 44. Frontier has not had any formal complaints against it.

23 45. Frontier has not had any civil or criminal proceeding filed against it.

24 46. None of Frontier's officers, directors or partners have been involved in any civil or
25 criminal investigations, or any formal or informal complaints.

26 47. None of Frontier's officers, directors or partners have been convicted of any criminal
27 acts in the past ten (10) years.

28 ...

1 **Competitive Services Analysis**

2 48. Frontier has requested that its telecommunications services in Arizona be classified as
3 competitive. Frontier's proposed services should be classified as competitive because there are
4 alternatives to Frontier's services; ILECs hold a virtual monopoly in local markets; Frontier will have
5 to convince customers to purchase its services; Frontier has no ability to adversely affect the local
6 exchange service market as several CLECs and ILECs provide local exchange services; and Frontier
7 therefore will have no market power in those local exchange markets where alternative providers to
8 telecommunications services exists.

9 49. Staff's recommendations as modified herein are reasonable and should be adopted.

10 50. The rates proposed by this filing are for competitive services.

11 **CONCLUSIONS OF LAW**

12 1. Applicant is a public service corporation within the meaning of Article XV of the
13 Arizona Constitution and A.R.S. §40-281 and 40-282.

14 2. The Commission has jurisdiction over Applicant and the subject matter of the
15 application.

16 3. Notice of the application was given in accordance with the law.

17 4. A.R.S §§ 40-282 allows a telecommunications company to file an application for a
18 CC&N to provide competitive telecommunications services.

19 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
20 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth
21 in its application.

22 6. Applicant is a fit and proper entity to receive a CC&N authorizing it to provide
23 competitive facilities-based local exchange telecommunications services in Arizona, subject to Staff's
24 recommendations set forth herein.

25 7. The telecommunications services that Applicant intends to provide are competitive
26 within Arizona.

27 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
28 it is just and reasonable and in the public interest for Applicant to establish rates and charges that are

1 not less than the Applicant's total service long-run incremental costs of providing the competitive
2 services approved herein.

3 9. Staff recommendations, as modified herein, are reasonable and should be adopted.

4 **ORDER**

5 IT IS THEREFORE ORDERED that the application of Frontier Communications of America,
6 Inc., for a Certificate of Convenience and Necessity for authority to provide competitive facilities-
7 based local exchange telecommunications services within the State of Arizona is hereby granted
8 subject to Staff's conditions in Findings of Facts No. 7 and 8 and as set forth in the following
9 Ordering paragraphs.

10 IT IS FURTHER ORDERED that Frontier Communications of America, Inc., shall procure a
11 performance bond or irrevocable sight draft letter of credit in the amount of \$100,000.

12 IT IS FURTHER ORDERED that Frontier Communications of America, Inc., shall file the
13 original performance bond or irrevocable sight draft letter of credit with the Commission's Business
14 Office and copies of the performance bond or irrevocable sight draft letter of credit with Docket
15 Control, as a compliance item in this docket, within 30 days of the effective date of this Decision.

16 IT IS FURTHER ORDERED that if Frontier Communications of America, Inc., fails to comply
17 with the timeframes listed above, the Certificate of Convenience and Necessity granted herein shall
18 be considered null and void after due process.

19 IT IS FURTHER ORDERED that Frontier Communications of America, Inc's., performance
20 bond or irrevocable sight draft letter of credit shall remain in effect until further Order of the
21 Commission, and the Commission may draw on the performance bond or irrevocable sight draft letter
22 of credit, on behalf of, and for the sole benefit of the customers of Frontier Communications of
23 America, Inc., if the Commission finds, in its discretion, that Frontier is in default on its obligations
24 arising from its Certificate of Convenience and Necessity.

25 ...

26 ...

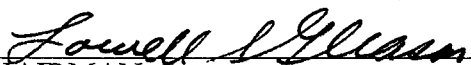
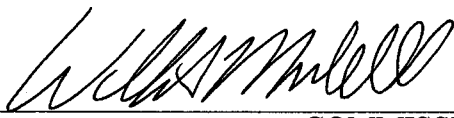


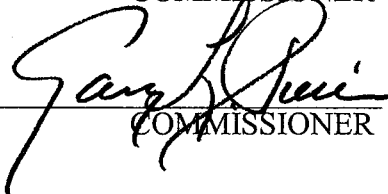
27 ...

28 ...

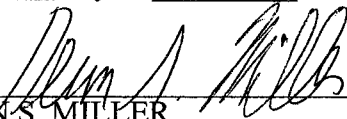
IT IS FURTHER ORDERED that Frontier Communications of America, Inc's performance bond or irrevocable sight draft letter of credit may be used by the Commission, as appropriate, to protect Frontier Communications of America, Inc's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from customers.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

 _____ CHAIRMAN	 _____ COMMISSIONER	
 _____ COMMISSIONER	 _____ COMMISSIONER	 _____ COMMISSIONER

IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 20th day of March, 2008.



 DEAN S. MILLER
 INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: FRONTIER COMMUNICATIONS OF AMERICA,
2 INC.

3 DOCKET NO.: T-04036A-07-0108

4 Curt Huttzell, Ph.D.
5 Government and External Affairs
6 FRONTIER COMMUNICATIONS OF AMERICA, INC.
P.O. Box 708970
Sandy, UT 84070-8970

7 Jeffrey W. Crockett, Esq.
8 SNELL & WILMER
9 One Arizona Center
400 East Van Buren Street
Phoenix, AZ 85004-2202

10 Christopher Kempley, Chief Counsel
11 Legal Division
ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
Phoenix, AZ 85007

13 Ernest G. Johnson, Director
14 Utilities Division
ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
Phoenix, AZ 85007